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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,888	12/19/2001	Monica A. McClintic	5057US (01-01-108)	3226

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EXAMINER

CAPRON, AARON J

ART UNIT PAPER NUMBER

3714

DATE MAILED: 06/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/027,888

Applicant(s)

MCCLINTIC, MONICA A.

Examiner

Aaron J. Capron

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 6. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-39 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baerlocher et al. (U.S. Patent No. 6,406,369; hereafter "Baerlocher").

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Referring to claims 1-2, Baerlocher discloses a method comprising providing, in association with a primary game, a bonus game comprising a simulated contest against an opponent (Figure 1); providing the player an opportunity to play one of the primary game or the bonus game (Figure 1, abstract); in association with play of the bonus game to represent the player in the simulated contest against the opponent (Figure 4); and randomly determining an outcome of at least one of the primary game and the bonus game. Baerlocher discloses that any game can be used as the bonus game selection (6:49-53, 9:54-57) which would encompass fighting games, but Baerlocher lacks a player selectable characters. However, it is notoriously

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well known in fighting games that players can select a game character that the player will use to compete against opposing game characters in order to give the player the best chance of winning the game. The additional game characters add variety to the game so players have the opportunity to use different game characters and therefore be interested in the game longer. One would be motivated to combine the features in order to allow a player the opportunity to select a game character in order to allow the player the best opportunity to win the game. It is also well known within the art of gaming that players can select which sports team they would like to be in order to play their favorite teams or players. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the ability to select a game character into Baerlocher's game in order to allow the player the best opportunity to win the game.

Referring to claim 3, Baerlocher discloses that any game can be used for the bonus game. It is notoriously well known in games that players have the opportunity to use items or game character elements in order to help the character proceed further in the game. One would be motivated to combine the references in order to allow game characters to proceed further into the game. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate game elements into the bonus game of Baerlocher in order to help the player proceed farther into the game and help the player win more money.

Referring to claim 4, as shown above, Baerlocher discloses using a plurality of characters that have been used in previous games. It is inherent that the game characters were created by the gaming programmers or designers, thus previously created.

Referring to claim 5, Baerlocher discloses the primary game requires placement of a wager as a precondition for play thereof.

Referring to claim 6, Baerlocher discloses the primary game comprises one of a reel type slot machine, card, keno, lotto and bingo games (4:66-5:2).

Referring to claim 7, Baerlocher discloses the opportunity to play the bonus game is enabled only upon the occurrence of certain predetermined bonus trigger events associated with play of the primary game and the bonus game (4:66-5:2).

Referring to claim 8, Baerlocher discloses the bonus trigger events include at least some of a randomly timed bonus triggered event trigger, a specified outcome from play of the primary game, a challenge from another player already participating in the bonus game, and use of a predetermined number of credits to buy play in the bonus game (10:37-43).

Referring to claim 9, Baerlocher discloses randomly determining the outcome of the primary bonus game or the bonus game using a random number generator.

Referring to claim 10, Baerlocher discloses that a plurality of players can play the bonus game to have teams play against each other (6:55-59).

Referring to claims 11-13, Baerlocher discloses that any contest, competition, event or situation can be used for the bonus game (9:54-57) and that the competition is displayed (Figure 1). The game can go as long as the player continues winning or wins the contest.

Referring to claim 14, Baerlocher discloses structuring the bonus game characters and the simulation of combat from a selection of modular components. It is inherent for a software game program to have modular components.

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Claims 15-28 correspond in scope to a method of conducting a game set forth for use of the method listed in the claims above and are encompassed by use as set forth in the rejection above. Sports games have an offensive and defensive side of the ball and combat games have offensive and defensive movements within the game.

Claims 29, 33, 35-36 correspond in scope to a method of conducting a game set forth for use of the method listed in the claims above and are encompassed by use as set forth in the rejection above.

Referring to claim 30, Baerlocher discloses at least one competition includes a plurality of competitions (6:47-59).

Referring to claims 31-32 and 34, Baerlocher discloses an award value with each competition of the plurality of competitions (7:45-50).

Claims 37-38 and 41-42 correspond in scope to a system set forth for use of the method listed in the claims above and are encompassed by use as set forth in the rejection above. Baerlocher discloses the games being connected over a network (6:5-19).

Referring to claim 39, Baerlocher discloses the plurality of gaming machines are positioned for viewing the at least one display device. Each gaming device has a display device.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baerlocher in view of Olsen (U.S. Patent No. 6,210,275).

Baerlocher discloses a gaming device having a bonus game that allows player to play each other, but does not disclose a display including a centrally located display device that is separate from the plurality of gaming machines. However, Olsen discloses a gaming machine

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having a second game that uses a central display device that is separate from the gaming machines (15:25-28). One would be motivated to combine the references in order to allow for all participants/spectators to see the status of the tournament. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a centrally located display device into Baerlocher's gaming machine network in order to allow for all participants/spectators to see the status of the tournament.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Logg (U.S. Patent No. 4,738,451) discloses a game that allow for players to have player selectable players and to have items to help the character move along within the game.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
MARK SAGER  
PRIMARY EXAMINER

ASC

gjc  
June 11, 2003